

State Board Forestry and Fire Protection

**Review of Forest Practice Rules titled
“Protection and Restoration in Watersheds with Threatened or Impaired
Values”**

Summary of Review for

Group 1- Goal/Intent and Definition sections

**(14 CCR 895.1, 898, 916, 916.1, 916.2, 916.9 (a) and (b),
916.12)**

BOF Staff draft July 31, 2008

I. Executive Summary Group 1 T/I Rule Review

Overview: The Board's Forest Practice Committee (FPC) initiated a review in April 2008 of the portion of the California Forest Practice Rules referred to as the "Threatened or Impaired Watersheds rules (T/I)". The T/I rules were initially adopted in September 2000 and address protection of Endangered Species Act (ESA) listed anadromous salmonid species and waterbodies listed as "Impaired" under section 303(d) of the Federal Clean Water Act. Heightened concern over the population viability of the species and the pending expiration of T/I rules on December 31, 2009 necessitate the review.

The FPC established the "T/I Review Process" as the charter for the T/I review. The review involves evaluation of specific criteria for each section (i.e., necessity, science basis, enforceability, and economic impacts), and development and consideration of alternative rule language proposals. The evaluations and alternatives development are generated from input from stakeholders, agencies, and the Board's Technical Advisory Committee. Central to this review is information that will be generated from the Board's contracted "Science Literature Review of Forest Management Effects on Riparian Function in Andromous Salmonid Fisheries".

The Review Process involves segregating the many subsections of the T/I rules into "Groups" of related rules (for purposes of manageability) and applying the Review Process to each Group. The Groups are:

Group 1- Definitions and Goal/Intent Sections

Group 2- Geographic Scope

Group 3 - Cumulative Impacts

Group 4 - Operational Requirements for Logging, Roads and Water Drafting)

Group 5 – Monitoring

As part of the review of the Group 1 rules, the FPC directed staff to:

- Collect information on the evaluation form stakeholders
- Summarize initial findings made by the FPC;
- Identify issues related to each proposed alternative;
- Identify areas of agreement and disagreement among the alternatives;
- Compile alternative rule proposals brought by stakeholder.

The FPC review of the Group 1 "Goal/Intent and Definition" sections has been substantially completed. This report below summarizes the review of the Group 1 T/I rules.

Initial FPC Findings: As part of the review of the Group 1 Goal/Intent sections, the FPC made several findings:

- The primary purpose of T/I review (in general) is to provide an adequate forestry regulatory program for protection of Endangered Species Act (ESA) anadromous salmonid species.

- Goal is to complete a review, based on science, and amend rules based on substantial input from the public, including regulated entities, and agencies.
- The T/I Goal/Intent sections should focus on ESA listed anadromous salmonid species requirements and 303(d) listed watercourse requirements, subject to an amended scope based consideration of public comment suggesting a broader scope.
- Potential rule amendments to better meet other agency's requirements are within the scope to the T/I review.
- In further meeting other agency requirements, opportunities for streamlining regulatory compliance should be developed. The Board shall send a letter to agencies requesting the opportunities for regulatory streamlining and the associated regulatory requirements necessary to obtain the relief. This letter was sent to agencies on July 18, 2008.
- The Board's counsel is reviewing whether it is within the authority of the Board to consider and include restoration activities as part of the T/I rules.

Areas of agreement: BOF staff identified areas of agreement that were common of to Group 1 rule proposals:

- Prescriptive standards should be extracted from Goal/Intent sections and restated elsewhere in the regulations.
 - The 2000 T/I title in section 916.9, "Protection and Restoration of Watershed with Threatened or Impaired Values" does not accurately reflect the regulations adopted in 2000. Adopted regulations did not completely or thoroughly include requirements for addressing 303(d) listed water bodies. Amendments should be considered to address modifying the title or further addressing 303 (d) requirements.
 - Separate goals and intent statements should be considered for protection of anadromous salmonids from those for 303(d) listed water bodies.
 - Modify 916.9 intent sections to specifically address protection of ESA listed anadromous salmonids, subject to reconsideration of scope of rules.
 - Consolidate into one section specific goals and requirements related to water board policies and laws for 303(d) listed water bodies and TMDL requirements. Consider consolidating these into section 916.12. Retain reference to water board policies and laws for non-303 (d) listed waterbodies as shown in existing sections 916 and 916.2.
 - Standardized terms for consistency with CEQA.
- Term "measurable" (as it relates to impacts to limiting factors in 916.9) should be reconsidered and potentially revised.
- Extract prescriptive requirements from goal sections in 895.1 definitions and 916.9 (a)(1)-(7) goal statements and restated elsewhere in the regulations .
 - Eliminate redundant intent statements and requirements and ambiguous terminology.

- Results from the Board's contracted scientific literature review will likely provide information for additional consideration on definitions, geographic scope, and other amendments. The FPC should revisit these rule sections following completion of scientific literature review.
- Do not agree on consolidated Group 1 alternatives (including some definitions and geographic scope) until other agency's input and literature review is completed.

General Issues: BOF staff compiled and summarized issues from stakeholder input that will likely need to be addressed by the FPC. (The stakeholders providing input on issues are in parentheses). A detailed list of issues by rule section follows the General Issues.

- A primary issue of the Group 1 rules is the extent to which the Board wishes to amend the T/I rules for consistency with water board, DFG and NMFS laws, goals, policies and recovery plans. Clear articulation is needed of the Board's intent to meet other agencies laws and policies. Agencies are gauging their level of participation based on the Board's interest in meeting agency laws and policies. Central to meeting other agency requirements is the Board's interest in 1) incorporating salmonid habitat restoration or recovery requirements and 2) contributing to restoration of 303 (d) waterbodies and preventing deteriorating waterbodies from becoming 303 (d) listed. (NOAA, SWRQB, DFG)
- The limitation to the protection of ESA listed salmonids may be considered in response to public comment suggesting an alternative scope.
- The RWQCBs brought forward specific geographic scope and riparian buffer protection standards amendments. These issues will be further analyzed as part of the review of other T/I sections (Groups 2, 3 and 4). (BOF staff)
- Standardization of terminology is needed for describing beneficial uses intended for protection: Example of multiple terms: riparian function, beneficial uses of water, waterbody beneficial uses, beneficial uses of water, beneficial uses of native aquatic and riparian species, beneficial functions of riparian zone, watercourses or lakes, native aquatic and riparian - associated species, quality and beneficial uses a water, riparian habitat that provides for the biological needs of native aquatic riparian associated species, beneficial uses, and watershed conditions. (BOF staff).
- DFG has brought forward amendments to section 916.1 (In Lieu Practices) although this was not a rule section modified under the T/I rules. The Board needs to decide if amendments of this section are within the scope of the T/I review and the extent to which recommended edits for this section should be included (BOF staff)

II. Detailed Issues and analysis:

The following is a detailed list of specific issues by rule section as compiled from Group 1 stakeholder input presented to the FPC. Stakeholders raising issue are in parentheses.

895.1

- Issue: Clarify scope of intent of T/I definitions to focus on ESA listed anadromous salmonids. (Ostrowski; P. Ribar). Alternatively, consideration could be given to expanding the scope of the rules to to all watersheds that contain, or did historically support, anadromous salmonids, regardless any ESA status.
- Issue: Separate characteristics of “saturated roads” and “stable operating surface” from description of resultant impacts (P. Ribar)

898

- Issue: Expand analysis of impacts for 303(d) waterbodies to both site specific and cumulative impacts (Ostrowski)
- Issue: Consolidate and eliminate redundant RWQCB requirements into section 916.12 (Ostrowski, P. Ribar, SWCB, BOF staff)

916

- Issue: Improve intent specificity and consistency with CEQA terminology by deleting term “potentially significant” (Ostrowski)
- Issue: Consistency with water board laws and policies (SWRQB)
- Issue: Compliance with State and Federal antidegradation for waterbodies not impaired (SWRQB)
- Issue: Simplify scope of intent by using term “riparian function” (CFA)
- Issue: Limit scope of intent (CFA)
- Issue: Remove descriptions and requirements on how to comply with intent language “measures taken” and “evaluations made” (CFA)
- Issue: Improve consistency with FPRs and CEQA terminology by adding terms “riparian associated” and “on the environment” (P. Ribar)
- Issue: Clarity of meaning of “adoption” (DFG)

916(a)

- Issue: Eliminate ambiguous language related to “restoration” (Ostrowski)
- Issue: Clarity in meaning of “feasible” (SWRQB)
- Issue: Remove redundant language (CFA)
- Issue: Limit scope of intent (CFA)
- Issue: Eliminate ambiguous language related to “good,” “threatened,” and “impaired” due to lack of clarity (P. Ribar)

916(b)

- Issue: Consistency with water board laws and policies (SWRQB)

- Issue: Remove descriptions and requirements on how to comply with intent language (CFA)

916(b) and (b) (1) and (b)(2)

- Issue: Redundancy with 916.3 and 916.9 (Ostrowski, P. Ribar)
- Issue: Remove descriptions and requirements on how to comply with intent language (CFA)

916(c)

- Issue: Provide more specificity on which beneficial use shall be protected (P. Ribar)
- Issue: Consistency of beneficial use with other FPR sections (P. Ribar, Ostrowski)
- Issue: Recognition that “restoration” is a significant management objective for both TES and all anadromy (Ostrowski)
- Issue: Consistency with waterboard laws and policies (SWRQB)
- Issue: Balance mandates for water quality and timber production (SWRQB)
- Issue: Remove redundant intent language (CFA)
- Issue: Limit scope of intent or balanced interpretation of timber production statutory intent. (CFA)
- Issue: Provide focused, unambiguous intent language (CFA)
- Issue: Additional consideration for protection measures needed for areas outside of riparian zones that may be adversely impact riparian zones (DFG)

916 (d)

- Issue: Remove redundant intent language (CFA)

916.1 (a)-

- Issue: Variable levels of justification for non-standard practices (SWRQB)
- Issue: In-lieu practices often do not achieve the full intent of the FPR to restore, enhance, and maintain aquatic and riparian habitat (DFG)

916.2 (a)(1) (2)

- Issue: Consistency of terminology (Ostrowski, P. Ribar)
- Issue: Consistency with water board laws and regulations (SWRQB)

916.2 (a)(3)

- Issue: Consistency of terminology (Ostrowski, P. Ribar)

916.2(a)(5)

- Issue: Create a new subsection specific to 303d listed waterbodies (Ostrowski)
- Issue: Create terminology consistent with CEQA (Ostrowski, P. Ribar)
- Issue: Clarity for term “restored” and “good condition” (Ostrowski, P. Ribar)

916. 2 (b) (c)

- Issue: Clarity of the term “appropriate minimum” (Ostrowski)
- Issue: Consistency of the application of T/I rules (Ostrowski, P. Ribar)
- Issue: Justification for non standard practices (SWRQB)

916.2 (5)

- Issue: Consistency with FPRs (P. Ribar)

916.9-

- Issue: Clarity of which beneficial uses are intended to be protected (Ostrowski, P. Ribar)

916.9 (a)

- Issue: Consistency with CEQA (Ostrowski)
- Issue: Clarity and specificity on which values are intended to be protected (Ostrowski)
- Issue: Remove descriptions and requirements on how to comply with intent language (CFA)

- Issue: Remove redundant intent language (CFA)
- Issue: Consistency with other FPR sections (P. Ribar)
- Issue: Specificity as to which values are to be protected (P. Ribar)
- Issue: Limiting factors approach may be an appropriate method of prioritizing restoration and recovery actions (DFG)
- Issue: Inconsistent with CEQA, which requires that all significant adverse impacts to the environment are avoided, minimized, and/or mitigated (DFG)

916.9(a) (1)

- Issue: Consistency of intent language (Ostrowski)
- Issue: Eliminate unnecessary/ redundant language (Ostrowski)
- Issue: Clarity of goals (Ostrowski, P. Ribar)
- Issue: Consistency in intent language (P. Ribar)
- Issue: Eliminate unnecessary/redundant or consolidate language (P. Ribar)
- Issue: Measurability of changes limiting factors (DFG)

916.9 (a) (2)

- Issue: Clarity of objectives (Ostrowski)
- Issue: Consistency with CEQA, measurability of changes to limiting factors (Ostrowski)
- Issue: Measurability of changes limiting factors (DFG)

916.9 (a) (3)-(5)

- Issue: Consistency with CEQA, measurability of changes to limiting factors (Ostrowski)
- Issue: Measurability of changes limiting factors (DFG)
- Issue: Expanded evaluation of “barriers” needed (DFG)
- Issue: Water drafting plan does not ensure adverse facts of flow reduction are avoided (DFG)
- Issue: Requirements for woody debris should not be limited to those stated in 916.9 I (DFG)
- Issue: Requirements for shade should not be limited to 916.9 g(DFG)

916.9 (a) (6)

- Issue: Eliminating redundant objectives (Ostrowski)
- Issue: Refine “shade” objectives (Ostrowski)
- Issue: Clarity of objectives (P. Ribar)
- Issue: Specificity on location where temperature objectives are met (P. Ribar)

916.9 (a) (7)

- Issue: Consistency with CEQA, clarity of term “substantial” for changes to limiting factors (Ostrowski)

916.9 (b)

- Issue: Consistency with CEQA, clarity of term “appropriate” (Ostrowski)
- Issue: Consistency with CEQA, measurability of changes to limiting factors

916.12

- Issue: Consolidation of 303b , water quality control board basin plan, and TMDL requirements (P. Ribar)

916.12 (a)

- Issue: Consistency with water board requirements (SWRQB)
- Issue: Clarity of FPR requirements for water board laws, policies, and plans (SWRQB)

916.12 (a) (b)

- Issue: Create watershed management plans for consistency with water board requirements (SWRQB)
- Issue: Proactively prevent 303d listings (SWRQB)

916.12 (b)

- Issue: Addressing cumulative impacts from existing stressors

end